

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERRANCE JON IRBY,

Petitioner,

v.

RON HAYNES, et al.,

Respondents.

Case No. 2:17-180 RAJ-BAT

**REPORT AND
RECOMMENDATON**

On February 5, 2017, petitioner Terrance John Irby filed a motion for leave to proceed *in forma pauperis* (IFP) and a proposed 28 U.S.C. § 2254 petition. Dkt. 1. He argues that a 1976 second degree statutory rape conviction was used to enhance the sentences for which he is currently incarcerated (2005 convictions for first degree premeditated murder and burglary). Previously, on January 29, 2017, Mr. Irby a motion to proceed IFP and a habeas petition in Case No. 17-133 RAJ-JPD. Mr. Irby was granted leave to proceed IFP and given leave to amend his habeas petition. Dkts. 4, 7, and 8. In his amended habeas petition, he seeks to challenge several convictions, including the 2005 murder and burglary convictions. Dkt. 8. Mr. Irby states that he filed two separate habeas petitions to avoid confusing the issues.

Accordingly, the Court recommends that this case be **DISMISSED WITH PREJUDICE**. Mr. Irby should bring all of his habeas issues in one petition and they should be brought in his existing habeas proceeding in Case No. 17-133 RAJ-JPD. The Court further

1 recommends that if this Recommendation is adopted, petitioner's motion to proceed *in forma*
 2 pauperis in this case be **STRICKEN AS MOOT**.

3 **CERTIFICATE OF APPEALABILITY**

4 When the Court dismisses a § 2254 habeas petition it must determine whether to issue a
 5 certificate of appealability ("COA"). A COA may be issued only where a petitioner has made "a
 6 substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(3). A
 7 petitioner satisfies this standard "by demonstrating that jurists of reason could disagree with the
 8 district court's resolution of his constitutional claims or that jurists could conclude the issues
 9 presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537
 10 U.S. 322, 327 (2003). Here, as no jurist of reason could disagree with this Court's evaluation of
 11 petitioner's habeas petition or would conclude that the issues presented deserve encouragement
 12 to proceed further, the Court denies issuance of a COA.

13 **CONCLUSION**

14 The Court recommends petitioner's IFP application be **STRICKEN AS MOOT** and that
 15 the proposed petition be **DISMISSED WITH PREJUDICE**. Mr. Irby is advised that he may
 16 file all of his claims in his existing habeas petition in Case No. 17-133 RAJ-JPD.

17 Any objections to this Recommendation must be filed no later than **Tuesday, March 14,**
 18 **2017**. The matter will be ready for the Court's consideration on **Thursday, March 16, 2017** and
 19 the Clerk should so note the matter. Objections shall not exceed five pages. The failure to
 20 timely object may affect the right to appeal.

21 DATED this 21st day of February, 2017.

22 

23 **BRIAN A. TSUCHIDA**
 United States Magistrate Judge